HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 916 of 2001
Old F.A.No. 540 of 1996

Collector, Dehradun.

…. Defendant-**Appellant.**

Versus

Hi-Tech Livestock Co. Pvt. Ltd.
Dehradun through its Managing Director.
… Claimant-**Respondent.**

Sri Nand Prasad, learned Standing Counsel for the appellant.
Sri Arvind Vashist, learned counsel for the respondent.

Date April 13, 2006.

Hon. B.S. Verma, J.

This appeal is directed against the judgment and award dated 1-7-1996 passed by the Additional District Judge, Dehradun whereby the learned Reference Court allowed the Land Acquisition Case No. 386 of 1992, Hi-Tech Livestock Co. Pvt. Ltd. Dehradun Vs. Collector Dehradun and the award of the Special Land Acquisition Officer (for short the ***SLAO***) was modified. The claimants were entitled to the market value of the acquired land @ Rs. 8 lacs per acre. The appellant was directed to pay Rs. 1,17,749.88 along with interest @ 15% per annum from 10-4-1993 upto the date of realization on the amount of Rs. 1,06,634.85 as mentioned in the impugned order.

Brief facts of the case are that the Collector Dehradun acquired 0.15 acre land belonging to the claimant-respondent for the construction of a bridge over Dulhani river at Moradabad-Dehradun road. The ntotification under Section 4 of the Land Acquisition Act (***for short referred to as the Act***) was published in the Gazette on 27.9.1991 followed by Notification under Section 6(1) of the Act on 27.12.1991. The possession over the land was taken on 10-4-1992. The Special Land Acquisition Officer after necessary formalities passed the impugned award dated 10-4-1992 thereby assessing the

market value of the land under acquisition @2,69,230.75 per acre on the basis of exemplar sale deed dated 17.2.1990 and accordingly awarded compensation of Rs.40,384.60 and allowed 30% solatium in addition to 12% interest on the compensation amount form the date of notification under Section4 up-to the date of possession, i.e. from 19.11.1991 to 10.4.1992. He further allowed interest @ 9% per annum from the date of possession to the date of award thereby total compensation of Rs. 55,005.15 was awarded in favour of the claimant-respondent.

Aggrieved with this award, the claimant-respondent preferred objections before the Collector, Dehradun alleging therein that the value of the land had been grossly undervalued which ought to have been assessed @ Rs. 8 lacs per acre. The land is situate on Moradabad-Dehradun high way and has great potential value. It was alleged that the Indian Institute of Petroleum, State Bank of India, Post Office, Harrawala Railway Station and various industries of lime-stone lay in the vicinity of the acquired land and the locality is highly populated. In addition, facility of water, electricity, etc. were available there. The claimant has claimed compensation at the circle rates fixed by the Collector. It was also mentioned that the State Government had issued a Notification wherein it was provided that the amount of compensation should not be less than the circle rates.

Accordingly, the preference under Section 18 of the Act was made to the District Judge Dehradun and the reference was registered as L.A.Case No. 386 of 1992.

Notice was issued to the Collector, who filed his reply alleging therein that the market value of the acquired land has been properly assessed and in calculating the market value, the sale transactions of the adjoining land were considered in accordance with law and the circle rate is not applicable for assessment of compensation. It was said that the land acquired was barred land and only a part of it was being used for agriculture. Facility of water and

electricity was denied in the locality of land under acquisition and other claims were also denied.

On the pleadings of the parties, the learned reference Court framed the following issues:-

1. What is the market value of the acquired land and to what amount of compensation, the applicant is entitled?

2. Whether the applicant became entitled to any interest on the compensation? If so, at what rate?

3. To what amount the applicant is entitled as solatium?

4. Relief?

The learned Reference Court took up Issue Nos. 1, 2 and 3 together for decision. Before the Reference Court, the claimant has examined Sri Swaran Singh, General Manager of the claimant company as P.W.1, who stated on oath that the land was acquired in the year 1991 for the purposes of construction of road and at the relevant time, the market value of the land was Rs. 10 lacs per acre. He has substantiated the allegations made in the reference by stating that the land in question is situate on Moradabad-Dehradun highway having great potential value. All necessary facilities of State Bank, Post Office, Railway Station were available there besides lime stone factories and the land is densely populated and developed area. The minimum circle rates fixed for the purpose of stamp duty was fixed by the Collector @ Rs. 8 lac per acre. This witness was cross-examined but nothing material favorable to the State could be brought on record or to cast doubt in his testimony. On the other hand, the cross-examination was made on the point of ownership of the claimant-company over the land under acquisition.

From the side of the State Sri K.M. Sharma, Amin, was examined as D.W.1, who has admitted in his examination-in-chief that the acquired land was situate adjacent to the main highway. He also stated that the Indian Institute of Petroleum is about ½ km. form

the acquired land. However, this witness denied that the market value of the acquired land was Rs. 8 lac per acre rather he stated that the market value of the land was assessed on the basis of the sale transactions of the similarly situated land. The learned Reference Court has observed that the exemplar sale deed was not filed from the side of the Collector. He was cross-examined and admitted that he had not inspected the acquired land. The learned reference court observed that D.W.1 could not give the relevant details of the situation of the acquired land. Accordingly, the reference court placed reliance on the evidence of the claimant's witness.

On behalf of the claimant-respondent, to prove the market value of the acquired land, two sale deeds (Exts. A-3 & A-4) were field. By the sale deed Ext. A-3 land measuring 0.375 acre was sold for Rs. 50,000/- on 22.2.1990, i.e. @ Rs. 13,33,333/- per acre. The reference court did not accept this sale transaction because *pucca* construction of two rooms was existing on the said land. Reliance was placed by the reference court on the other sale deed dated 14.6.1991 (Ext.A-4) executed by Km. Rukmani Sharma in respect of 0.066 acre of land of Khasara no. 142 in favour of Sharwan Singh for a consideration of Rs. 50,000/-, i.e. @ 7,57,575.75 per acre. The reference court found that the acquired land and the land sold vide Ext. A-4 are in the same vicinity. The learned reference Court found that the sale-deed Ext. A-4 had been executed within one year of the Notification under Section 4 of the Act. Ultimately, relying the sale transaction Ext. A-4, the learned Reference Court has passed the impugned award.

In support of appeal, it has been contended that the finding of the reference court awarding market value of the land under acquisition @ Rs. 8 lacs per acre is unjustified and without any evidence no record. It was also contended that the exemplar sale deed dated 17.2.1990 executed by Anita in favor of Vidyawati for a consideration of Rs. 21,000/- represented the proper market value and the S.L.A.O. has rightly relied on the same.

I have heard learned counsel for the parties and perused the entire evidence on record in including the impugned judgment and award of the reference court.

So far as the contention that the aforesaid sale deed dated17-2-1990 relied upon the ***S.L.A.O.*** represented the proper and fair market value of acquired land is concerned, the Sate has not filed copy of this sale deed before the reference court. The appellant has not even led any evidence in this appeal. It may be noted that before the Reference Court there was ample opportunity for the State to have field copy of the exemplar sale deed for being scrutinized by the reference court regarding assessment of proper market value. Now it does not lie in the mouth of the appellant to challenge the impugned award on this ground.

The only point for determination in this appeal is whether the sale-deed (Ext.-4) relied on by the Reference Court represented the proper market value and whether the finding recorded by it is based on evidence on record. I have carefully gone through the impugned judgment.

A complete reading of the judgment of the reference court reveals that the claimant-respondent had relied upon two sale-deeds- Ext. A-3 and Ext.A-4. The learned Reference Court has ignored the sale deed dated 22.2.1990 by which the land was sold @ Rs. 13,33,333/- per acre. On the other hand, the Reference Court has placed reliance on the Sale Deed dated 14.6.1991 whereby land measuring 0.066 acre of Khasara no. 142 was sold in favour of Sharvan Singh for a consideration of Rs. 50,000/- which comes to Rs. 7,57,575.75 per acre. It has been clearly held by the reference court that the land under this sale deed is more or less in the same vicinity. It has been observed at page 9 that ***"When compared to this land of Ex.-4, the acquired land appears to be in more beneficial area in the sense that it is adjacent to the Dehradun-***

Moradabad Road where the land of this sale-deed is about 100 Mtrs. Away from the Hardwar Road as mentioned in the sale-deed (Ex.4). This sale-deed (Ex.-4) was executed on 14.6.91 and the notification U/s 4 of the Land Acquisition Act was published in the newspaper on 9.11.1991 and was published in the gazette on 27.9.1991. Thus, Ex.-4 has been executed within one year of the Notification U/s 4. There is nothing on record to show that Ex.-4 was executed with any ulterior motive giving a fictitious value of the land." Finding the land under acquisition in better position, the learned Reference Court has assessed compensation @ Rs. 8 lacs per acre, as the acquired land was just adjacent to the main Hardwar road.

As narrated above, the learned Reference Court while assessing the market value of the land has considered all relevant aspects of the case on the basis of the documentary as well as oral evidence led by both the parties. As mentioned earlier, the claimant-respondent has led more reliable evidence before the Reference Court and has described the locality of the land under acquisition by stating that the acquired was having great potential value. It was established on record that the land was situate on the Moradabad-Dehradun high way and the land was in the vicinity of developed area having facilities of banking, post office, railway station as well as Indian Institute of Petroleum is near the acquired land. The claimant's witness has fully proved its case before the Reference Court. On the other hand, the appellant has neither led relievable evidence nor filed copy of the exemplar sale-deed before the reference court. Having taken into account, the evidence on record, I am in full agreement with the finding of the reference court on the point of market value. The market value determined by the Reference Court is fully based on the evidence led by the claimant-respondent.

In the course of argument, a lame stand has been taken by the appellant that the sale transaction dated 14.6.1991 is

Subsequent to the date of Notification under Section 4 of the Act. This argument is misconceived. Notification under Section 4 of the Act was admittedly published in the Gazette on 27-9-1991 and the sale-deed Ext. 4 was executed on 14.6.1991.

For the reasons and discussion aforesaid, I find that the reference court was justified in determining the market value of the acquired land @ Rs.8 lacs per acre. I do not find any infirmity or illegality in the impugned award. The appeal is devoid of merit.

The appeal is hereby dismissed. The impugned judgment and award dated 1-7-1996 is upheld. No order as to costs.

(B.S. Verma, J.)

RCP